UNITED NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.193
14 November 1994

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Thirteenth session

SUMMARY RECORD OF THE 193rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 9 November 1994, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Initial report of Peru

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.94-14637 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Peru (CAT/C/7/Add.16)

1. At the invitation of the Chairman, Mr. Vega Santa-Gadea and Mr. San Martin-Castro (Peru) took seats at the Committee table.

2. Mr. VEGA SANTA-GADEA (Peru), introducing the report, said that, as Minister of Justice, his presence in Geneva should be construed as proof of his Government's intentions to support the efforts of the international community to eradicate torture. The time when Peru neither investigated nor punished human rights violations had long since passed. The relatively recent but acute drug trafficking problem and the widespread terrorist violence launched in the early 1980s by the Sendero Luminoso (Shining Path) to discredit the Government and the forces of order had together created a highly complex situation in the country and exacerbated the extreme poverty of its most vulnerable groups.

3. Although the destructive capacity of the Sendero Luminoso had been minimized during the first few years of terrorism, the civilian population had remained exposed to terrorist violence with no appropriate legal framework to enable it to respond legitimately and effectively.

4. The complaints made against the State in international forums, with their emphasis on the abuses by the forces of order, had quickly put Peru at the head of world statistics for allegations of enforced disappearances, extrajudicial executions and torture and, in 1989, Peru had been cited before the Commission on Human Rights as the State with the highest number of alleged disappearances. The period during which successive Governments had proved incapable of addressing those complaints satisfactorily had become known as the period of Peru's international silence and generated grave doubts about respect for human rights in the country.

5. That situation was fortunately in the past. Although the national peace process was not yet complete, the tremendous efforts of President Fujimori's Government since 1990 had started to produce encouraging results for the defence and promotion of human rights: a Congress had been elected freely and democratically in 1992, local authorities had been elected in 1993 and a constitutional referendum had been held later in the same year.

6. Due to its reorganization of the macro-economy, which was expected to bring the hyper-inflation of 1990 down to 0.3 per cent by the end of 1994, the Government had been able to rejoin the international financial community and modernize the country's administrative structure and tax system.

7. It had also succeeded in capturing Peru's main terrorist leaders through the introduction of severe but necessary anti-terrorist legislation, as a result of which there had been a significant drop in the number of complaints of human rights violations, a fact which had not gone unnoticed by the international community. In particular the Special Rapporteur on the question of torture, in his 1989 report (E/CN.4/1989/15), had recognized that the legal framework for the protection of human rights was basically sound.

8. In December 1993, he had been instructed by his Government to set up a multisectoral committee composed of highly experienced senior officials to prepare the report on torture. Working on the basis of the United Nations human rights reporting manual, the Committee had emphasized that respect for human rights was essential to the country's peace process and that an energetic educational campaign to that end was necessary. The Ministry of Defence, for its part, had taken measures such as the publication and distribution of an informative guide for serving personnel which condemned torture. Instruction was also provided and discussions held on the principal international human rights instruments as an integral part of officers' educational and training programmes. For the purposes of the report, the Committee had also been in contact with the National Human Rights Coordinator with a view to gaining the support of the human rights NGOs and benefiting from their experience.

9. Following the radical changes which had taken place in his country, an ongoing system of cooperation had been established with the United Nations human rights bodies and a number of officials had visited Peru, including the Special Rapporteur on extrajudicial, summary or arbitrary executions in 1993 and representatives of the Inter-American Commission on Human Rights, and an invitation had been issued to the Representative of the Secretary-General on the human rights issues related to internally displaced persons. An agreement had also been signed with the International Committee of the Red Cross (ICRC) giving its representatives unrestricted access to all Peru's prison installations and authorizing them to visit its military and police establishments.

10. In 1992, his Government had submitted its second periodic report to the Committee on Civil and Political Rights and, in 1993, had reported to the Committee on the Rights of the Child. It had also submitted a report to the Committee on the Elimination of Racial Discrimination, its third report on Civil and Political Rights, and was waiting for the other human rights committees to set dates for the presentation of the relevant reports. Already there had been a significant reduction in the number of complaints of human rights violations and an improvement in the quality and quantity of replies from the Government to communications from special rapporteurs and working groups.

11. Mr. SAN MARTIN CASTRO (Peru), outlining the main features of Peru's legal system, explained that the State was obliged under article 43 of the Constitution to guarantee human rights and the safety of its citizens and to promote social justice. The protection of fundamental human rights, including physical integrity, and the ban on torture and inhuman or degrading treatment were covered by article 2, paragraph 1 and paragraph 24, subparagraph (h). A complex network of institutions and procedures had also been established to deal with human rights violations. The defence of human rights was entrusted to an Ombudsman, responsible to the Public Prosecutor, who also supervised the criminal prosecution process and whose Department kept the National Register of Detainees. That Register had been established to prevent extrajudicial disappearances, arbitrary detention and the ill-treatment of detainees, who were also protected by the Code of Penal Procedure.

12. A Human Rights Commission, composed of parliamentarians of all political persuasions, had been established by Congress to protect, guarantee and investigate human rights violations. It had achieved a high national profile on account of its very active work in the worst cases of human rights violations and abuse of authority.

13. The executive Power was also actively involved in human rights. A National Council for Human Rights had been set up within the Ministry of Justice to be responsible for promotion, coordination and monitoring of and advice on fundamental human rights. In addition, there were departments in every ministry and section of the armed forces and National Police which were responsible for protecting and monitoring fundamental human rights and freedoms. The work of the many human rights NGOs also had the full support of the State, and they had complete freedom of action.

14. Individuals could appeal to the courts, the Attorney-General of the Nation and the Ombudsman to protect their human rights, and could also initiate habeas corpus action even during states of emergency. The right to physical integrity could in no circumstances be suspended. Individuals could apply to the Ombudsman for support in cases brought against the authorities, and to the Attorney-General to have the perpetrators prosecuted.

15. The Public Prosecutor was empowered to supervise police activity and inspect military establishments in order to prevent unlawful detention or illegal practices against individuals. Specific legislation had been passed to control the military in emergency zones and to ensure that detainees were held only in premises established for the purpose and were entered in the National Register.

16. Torture was expressly forbidden and punishable by law: article 180, paragraphs 1 and 9, of the Code of Military Justice forbade torture and made obedience to a superior unlawful if torture was involved. Decree-law No. 25662 provided that, where the perpetrators of torture were members of the police, the penalty would be double the maximum sentence set by the Penal Code or special laws. Thus the penalty for torture which left lesions was between 4 and 16 years' imprisonment according to the severity of the injuries. The police and armed forces were also subject to discipline by investigating councils and summary procedures. Any "proof" obtained by illegal methods was invalidated.

17. Unfortunately, torture had not been completely eradicated. Efforts to improve the law continued, including the introduction of a training system and specific directives and other orders described in detail in paragraphs 65 to 68 of the report (CAT/C/7/Add.16), and, although terrorist violence and an acute shortage of funds continued to hamper those efforts, progress had been made. National legislation currently met international standards, establishing Peru as a State under the rule of law which actively discouraged and punished torture. Nobody could be extradited to another country if there was any risk that proper legal processes would not be observed or minimum guarantees upheld. In the case of public servants, including the police and the military, obedience to a superior could not be used as a ground for justifying torture or avoiding blame.

18. An analysis of cases before the Human Rights Commission indicated that the State did not attempt to avoid investigations into torture. On the contrary, the disciplinary, investigatory and judicial bodies of the security forces took immediate action wherever possible. It was to be hoped, therefore, that the Committee would recognize that the Peruvian Government and people did not intend to ignore torture, wherever it was perpetrated.

19. With regard to anti-terrorist legislation, an effective system had been devised of strengthening the operational capacity of the police, the armed forces and the intelligence services while at the same time making the forces of order aware of the need to respect human rights. Offices and procedures had therefore been set up to deal with complaints and punish those responsible.

20. Although the anti-terrorist model was not perfect, a number of factors needed to be taken into account. Firstly, the Sendero Luminoso and Tupamaros guerrillas had started a war against Peru and its democratic institutions, which had finally led to the introduction of strict provisions in 1991. It should not be forgotten that those genocidal groups had been responsible for the deaths of over 27,000 persons and for material damage amounting to more than the country's external debt. Secondly, given the weak institutional framework, emergency measures had been adopted to enable the forces of order and legal institutions to confront the dangers and restore public order. Thirdly, emergency measures inevitably restricted certain rights in the interests of restoring order and resolving the political and institutional crisis provoked by terrorism. Hence the new legal framework, summary procedures, faceless judges and the maximum security jails, inter alia. The terrorist war had also made it necessary to strengthen the DINCOTE (Special Police) and to institutionalize the Operational Command.

21. That anti-terrorist policy had rendered it possible to make considerable headway in the fight against armed violence. The most important leaders were in prison, and a large proportion of the terrorist forces had been defeated. An atmosphere of calm and security currently reigned, and it seemed likely that the country would soon be in a position to overcome its most urgent problems.

22. Nevertheless, despite the advances made in combating terrorist forces both in military terms and in terms of the application of the law, the Government also recognized that certain human rights problems had been generated by the general atmosphere of violence and the lack of respect for human life. The visceral antipathy of the members of the security forces to terrorists, the lack of disciplinary and judicial control mechanisms as a result of budgetary and organizational problems, the infiltration of subversive forces into numerous areas of national life, had all tended to undermine the efforts to prevent and punish human rights violations.

23. It should be emphasized, however, that the political will existed to penalize malpractice, and progressively to modify the more controversial aspects of anti-terrorist legislation. Measures taken in that regard included the authorization for public procurators to enter barracks and detention centres, the setting up of the Council for Peace, regulations ensuring that human rights were guaranteed in the course of operations in emergency zones,

the setting up of human rights mechanisms within the Ministry of the Interior and the Ministry of Defence, the compiling of a National Register of Detainees, and finally the conclusion of agreements with the International Committee of the Red Cross (CICR). The greater the success achieved against subversion, the more flexible police and judicial procedures had become, demonstrating that anti-terrorist legislation was temporary in nature, and would continue in force only as long as it was needed.

24. As part of the changes he had described earlier, anti-terrorist control measures had been considerably modified. Recourse to a retrial had been facilitated to take account of the possibility of judicial error. The remedy of habeas corpus had been restored in the case of detention alleged to be arbitrary: the same remedy was still in force where cases of torture were concerned. Regulations restricting the right to defence and providing for sentencing in absentia had been repealed, and conditional release was permitted.

25. Although repentance legislation, formerly regarded as one of the cornerstones of the anti-terrorist campaign, was no longer in force, it should be noted that, under the procedure governing criminal trials, confession to the court could lead to a reduction of a sentence to a level below the legal minimum.

26. Some people considered that such legislation had served to facilitate the use of torture and ill-treatment by the forces of order, but that had not been so. It could not be said that suspension of the right to habeas corpus had made torture possible, since the right to bodily integrity had not been suspended. Pre-trial detention in police custody for up to 15 days was subject to a constitutional requirement for the detainee to be put in contact with the relevant public procurator and, indeed, all military and police operations were carried out with the public procurator's knowledge. The Public Prosecutor's Department Organization Act had not been suspended: that Act required that detainees be afforded guarantees by the public procurators, and that the pre-trial proceedings should not involve any abuse of fundamental rights. The current Constitution laid down that investigations were subject to the authority of the Public Prosecutor, and the police were required to obey instructions issued by him.

27. As part of the national effort to combat irregularities, a complex network of procedures had been set up to hear complaints and to make investigations. Any member of the armed forces or the police accused of misconduct was liable to prosecution. For instance, between 1986 and 1993, 108 senior officers had been accused of misconduct: 43 of them had been tried and 28 sentenced. A total of 453 junior officers had been accused of misconduct, of whom 185 had been tried and 151 sentenced. In 1992, 20 members of the armed forces had been tried of whom 15 had been sentenced, and in 1993, 51 had been tried and 33 sentenced.

28. It should also be noted that, in 1992, 1,088 acts of violence had been perpetrated by subversive organizations, while, 1,032 such acts had been perpetrated in 1993. Those figures showed how much remained to be done before subversion could be brought to an end, and went some way to explain why the dismantling of the anti-terrorist system had not gone as far as the Government

could have wished. Peru was confronted by one of the most violent armed movements in the world, and the scale of the problem faced by the Government in dealing with it should be taken into account.

29. The CHAIRMAN thanked the Peruvian delegation for its very comprehensive introduction to the report which, he was sure, had satisfied the concerns of many members of the Committee.

30. Mr. GIL AVEDRA (Country Rapporteur) said that the Committee was grateful to the Peruvian Government for having sent such a high-level delegation, including the Minister of Justice. That augured well for a frank and constructive dialogue.

31. The Committee was fully aware of the gravity of terrorist activities in Peru, activities which had shaken the State to its very foundations. Terrorism violated the most basic of human rights. However, all would agree that in combating that evil, certain basic principles had to be respected, since only thus could the Government properly distinguish between good and bad. In many Latin American countries, measures taken to combat terrorism that did not respect the law had led to terrible consequences. He would venture to state that Peru's anti-terrorist legislation did not seem to be helping to eradicate torture; on the contrary, in many cases it seemed to be facilitating it.

32. He would address himself first to the core document (HRI/CORE/Add.43). Paragraph 65 of that document stated that Peru had pressed for the development of legal doctrine to enable international law to cover terrorism as a violation of human rights; he would appreciate more information on the progress of that initiative.

33. According to paragraph 69, the new Constitution of 1993 incorporated certain new concepts: he would like to know what those new concepts were and why other concepts had disappeared, notably the principle that an accused person must not be required to incriminate himself. The abolition of that rule would seem to be in contradiction with the principle of the presumption of innocence.

34. Paragraph 78, subparagraph (o), stated that, under the new Constitution, the President had power to order extraordinary measures, by means of emergency decrees having the force of law, "whenever required by the national interest". He asked how the national interest was defined; whether the approval of Congress was necessary for the adoption of such measures and whether Congress had the opportunity to make its views known, and if it had nothing to say, whether the decree then became valid.

35. Paragraph 114 stated that, under the new Constitution, the death penalty might be imposed only for treason in time of war and for terrorism. However, article 235 of the previous Constitution had limited the death penalty to treason, which meant that its scope of application had actually been increased. According to article 140 of the new Constitution, international instruments to which Peru was a party could not affect the death penalty, because such instruments had a lower status in Peru's legal hierarchy than the Constitution. That situation seemed to constitute a clear violation of, inter alia, the International Convention on Civil and Political Rights.

36. Concerning paragraph 123, subparagraph (b), he wondered what the procedure for confirming the appointment of judges and procurators was and whether the National Council of the Judiciary was currently functioning. The 1979 Constitution had enshrined the principle of the irremovability of judges: however, under President Fujimori, all judges had been removed from their posts, and then gradually reinstated. He wondered whether the reinstatement process was complete and whether the members of the National Council of the Judiciary would have to undergo the same process.

37. With reference to paragraph 125, he asked what the Board of Senior Government Procurators was and how its members were elected. Concerning paragraphs 139 and 140, he would like to know what precisely were the activities of the Commission on Human Rights and what had so far been achieved by the National Council for Human Rights.

38. Paragraph 148 referred to the procedure for dealing with offences committed by members of the armed forces. It stated that, while ordinary offences fell within the competence of the ordinary courts, offences committed in the course of duty were tried by military courts. He would appreciate an explanation of how the line of demarcation between civil and military offences was drawn.

39. In connection with paragraph 175, he would like to know whether the Office of the Ombudsman, referred to by the Peruvian representative, was already functioning.

40. Paragraph 162 referred to a decree authorizing procurators in emergency zones to enter police stations. He wondered whether there was any information available as to whether those visits had produced any results in terms of responding to complaints by detainees of ill-treatment.

41. On paragraph 164, subparagraph (a), he would like to know how many states of emergency had been decreed in 1990, 1991, 1992, 1993 and 1994 respectively and whether, in each case, the procedure established under the Constitution for such decrees been respected. It was stated in paragraph 169 that, under the new Constitution, international treaties formed part of national law but that, if human rights treaties affected constitutional provisions, a process of approval by Congress would be necessary. It would seem that, in the Peruvian legislative hierarchy, international treaties currently ranked lower than they had done under the 1979 Constitution and he inquired which would prevail in the event of a conflict between a treaty and Peruvian law.

42. Turning to the report itself (CAT/C/7/Add.16), he noted that paragraph 36 stated that torture was defined in article 121 of the Criminal Code as a combination of two offences, injury and abuse of authority. However, the old Criminal Code, dating from 1924, had given a much more specific definition of torture. The new formulation did not seem to cover the full scope of article 1 of the Convention, which would mean that Peruvian legislation was not adequate to deal with so serious an offence.

43. Similarly, the legislation on extradition did not seem to be in keeping with the universal principle laid down in the Convention. The Committee had been supplied with information on special legislation for crimes of terrorism,

but not on the procedures applicable in the case of non-terrorist crimes. There was nothing in the report concerning, for example, the period within which a detained person had to appear before a judge, or on the provisions for detainees to contact their relatives and lawyers.

44. On the question of the practical implementation of the Convention in Peru, he welcomed the series of measures adopted to criminalize torture and to prevent its occurrence. However, he wished to stress that the Convention required not simply measures but effective measures: a law that was not applied in practice was a dead letter. The Committee had received reports from many reputable non-governmental organizations, concerning an enormous number of cases of torture which had not yet been resolved. All those reports concurred in concluding that torture was still practised on a massive scale in the country, and that its perpetrators enjoyed virtually complete impunity.

45. The Government had provided information on certain cases in the appendix to the report, but concluded that none of them involved torture. He hoped that the Committee would receive more cooperation in the matter in future. The first step in dealing with a situation was to acknowledge its existence, and paragraph 14 of the report did, indeed, admit that the practice of torture continued.

46. Following his visit to Peru, the Special Rapporteur on extrajudicial, summary or arbitrary executions, had found evidence, tallying with that collected by non-governmental organizations, that many of the measures adopted by the Government to combat torture were totally ineffective. He had noted, in particular, increasing interventions on the part of the military, who exercised almost complete monopoly over the judicial process and frequently had cases transferred from the civil courts to the military courts. All the evidence went to show that the penalties for torture were inadequate, both in quantity and in quality. He appreciated the information just given by the representative of Peru on the number of officers who had been arrested and tried, and would be glad if more details on those cases could be provided.

47. It was asserted in paragraph 179 of the core document that the anti-terrorist legislation had enabled a distinction to be drawn between a political opponent and a terrorist. He himself did not think that it was possible to distinguish between, for instance, an act of violence aimed at destabilizing the State and a similar act directed against an individual for personal reasons, unless the subjective element, the intent, was taken into account. Similarly, the distinction between a terrorist offence and a treasonable offence was not made sufficiently clear in the decree-laws referred to in paragraph 175 of the same document, notably Decree-Law No. 25,659 of 13 August 1992.

48. He did not see how extending police custody could help achieve better results. Moreover, holding a detainee incommunicado was an invitation to commit torture. The interference of the military in civil cases undermined the impartiality of the courts, and the impossibility of lodging an appeal opened the door to irreparable judicial error, particularly when a person was sentenced to death.

49. All those practices, as well as the use of "faceless judges", were contrary to due process and violated the rights of the accused. Much of Peru's legislation was incompatible with its own new Constitution, and he wondered why it had not been ruled unconstitutional.

50. The practices to which he had referred violated virtually all international standards. He reminded the delegation of Peru that, in accordance with article 2 of the Convention against Torture, no exceptional circumstances whatsoever could be invoked as a justification of torture.

51. Mr. LORENZO (Country Rapporteur), having welcomed the statement by the delegation of Peru, which showed that its Government was determined to put an end to torture and similar ill-treatment, said that his first questions would relate to paragraphs in the core document (HRI/CORE/1/Add.43).

52. In paragraph 63, reference was made to "social action by the State through the armed forces and police". He asked what the remit of the police and of the armed forces was and what that "social action" consisted of.

53. In paragraph 70, it was stated that one of the main innovations of the new Constitution was "the right to remove authorities". He asked which articles of the Constitution established such a possibility.

54. According to paragraph 82, members of the armed forces and the National Police could be ministers. If such persons could be ministers while still on active service, it was not clear to him how they could reconcile the need to obey their superior officers with their independent ministerial roles.

55. Paragraph 111 stated that the power to administer justice emanated from the people and was exercised by the judiciary through its hierarchical organs in accordance with the Constitution and the laws. He would like to know whether the principle of the monopoly of the judiciary was respected or whether other bodies, particularly military bodies, exercised judicial functions and whether such bodies formed part of the judiciary or of the executive power. He sought clarification on the powers of the organs of military justice and the circumstances under which they could try civilians, and requested an explanation of the term "hierarchical organs" in the paragraph he had mentioned. If it meant that the higher courts had a hierarchical power over the lower courts, that would be incompatible with the principle of the independence of each judge to try cases for which he had jurisdiction.

56. Concerning paragraph 123, subparagraph (b), the requirement that the appointment of judges and procurators be confirmed every seven years likewise appeared to fly in the face of the principle of the independence of the judiciary. In Peru, responsibility for preventing torture lay with the procurator but, if the procurator was not independent, that crucial principle was not upheld.

57. In paragraph 148, it was stated that offences committed by members of the armed forces fell within the competence of the military courts; that suggested that acts of torture and similar ill-treatment committed by members of the armed forces in the exercise of their duties might be condoned.

Moreover, it was difficult to see how the obligation to ensure an impartial investigation (art. 12 of the Convention against Torture) could be respected by members of the military sitting in judgement of their own comrades in arms.

58. He would like further details about claims for compensation, to which reference was made in paragraph 152. He asked whether it was possible to initiate proceedings against a public official and the State simultaneously, how long such proceedings generally lasted and whether statistics were available on cases in which civil compensation had been paid to the victims of torture or other ill-treatment.

59. A reading of paragraph 165 made him wonder whether the members of the armed forces were accountable to the executive Power or whether they were not subject to any control whatsoever. Nor could he understand why it was to be expected that the Political Military Command should have under its control the members of the National Police.

60. Turning to paragraph 182, he inquired how many "faceless judges" there were, what powers they had and whether anyone knew their identity. He would also like to know whether such a judge could be held responsible under administrative, civil or criminal law for judicial errors or arbitrary acts and why faceless judges were thought to be necessary in any case. Such judges were not masked, but sat behind a screen, so that they were not visible to persons in the courtroom. He had heard about a defence lawyer who had argued his client's case for five minutes, following which he had been informed by a court official that he had been wasting his breath, because the judges had not been present during his statement. There was no corroboration of that anecdote, but it was easy to imagine such a scene taking place; it was inconceivable that the rights of the defence could be protected under such circumstances.

61. Reverting to paragraphs 53 to 56, he asked how many members there were of the Sendero Luminoso, how many were in prison, how many were still active and, above all, how many of its alleged members, as well as those of other subversive groups, had been mistakenly sentenced to prison terms - a common occurrence, judging by the publication of the Instituto de Defensa Legal entitled "177 Casos de Injusticia y Error Judicial en el Perú" (177 Cases of Miscarriage of Justice in Peru), a compendium of carefully documented cases, including that of Mr. Arcadio Cieza Tapia, who, falsely accused of being a terrorist, had been tortured and ill-treated and had been held in detention for more than 22 months in Pisci awaiting trial before a "faceless" court.

62. He also had a number of questions concerning Peru's initial report (CAT/C/7/Add.16). According to paragraph 2 of that document, statements obtained by violence were null and void. He would like to know how that was ensured in practice, whether military and faceless judges declared null and void all statements obtained under torture, whether any detainee could request a medical examination and whom his relatives could approach with such a request.

63. He agreed with Mr. Gil Lavedra that detention for 15 or even 30 days was far too long: detainees were usually tortured at the beginning of their detention so that, by the end of 30 days, the visible signs of such ill-treatment had generally disappeared.

64. Paragraph 9 of the report was rather vague, and gave the impression that resort to ill-treatment was not a disciplinary offence. Although paragraph 10 was clearer, it seemed, nevertheless, that the penalties for such an offence were quite light, ranging from verbal warning to retirement. In his view, any such act warranted immediate suspension pending a thorough investigation.

65. Paragraph 14 was praiseworthy for its evident sincerity, but gave an unfortunate picture of the practice of torture in Peru, of an apparent breakdown in State control of military and police activities in that regard, and of a lack of suitable programmes of education. He would appreciate clarification of the apparent contradiction between the reference to the lack of education and training programmes and the mention of "an aggressive policy regarding training and raising awareness of individual rights". He would also like to see a detailed list of the complaints, referred to in paragraph 19, of alleged human rights violations.

66. He was disquieted by the implications of paragraph 26: the statement that, under Peruvian legislation, no circumstances could be allowed to legitimize torture on the grounds of obedience to orders from the superior was hardly compatible with the acceptance of acts in accordance with a compulsory order issued by a competent authority as justification for exemption from liability. The notion of exemption surely implied the existence of an offence. In that connection, he supported Mr. Gil Lavedra's comments with regard to punishment for conduct of the sort covered by article 1 of the Convention.

67. Although the Committee had not deemed it essential to typify acts of torture, its experience in considering situations in many countries had shown the usefulness of typifying forms of torture, together with corresponding sanctions, especially since a lack of clarity in that regard could lead to situations in which some forms of ill-treatment were either disregarded or punished very lightly.

68. The appendix to the report contained a number of cases of alleged ill-treatment and torture by personnel of the Peruvian National Police. With reference to case I.B, he was disturbed by the length of time between the original incident, on 27 April 1992, and the submission of the findings, on 31 December 1993, and by the failure to refer the case to the Public Prosecutor or the independent judiciary. With regard to case I.C, it seemed that a judge who had issued a writ of habeas corpus had been removed from office; he would like to have details of the relevant proceedings. With regard to case I.E, he found it astonishing that, as a result of an incident in which several people had been killed, only one person, with the rank of sergeant, had been charged. Referring to case III.E, in which two persons had been found dead shortly after having been arrested by military personnel, he asked why the case had been judged by a military court.

69. In general, the cases set out in the appendix gave the impression that whenever organs of the executive Power, such as the Ministry for Foreign Affairs, were approached by special rapporteurs or other accredited human rights entities, the cases concerned were simply transmitted in writing to the military or police authorities, as if they alone were concerned with such allegations and alone responsible for any relevant action; likewise disturbing was the apparent failure to involve the independent judiciary and to monitor action taken by the military or police authorities.

70. There again, paragraph 14, for all its frankness, gave rise to serious contradictions and considerable disquiet - a disquiet expressed even by Mrs. Fujimori, who had voiced concern about the condoning, in certain quarters, of arbitrary acts.

71. Similar disquiet was aroused by certain cases reported by Amnesty International, such as case 19, which alleged the ill-treatment of some 300 prisoners, including members of the Sendero Luminoso, in the Castro Castro prison at Lima, who were alleged to have been left in the prison yard, following the putting down of disturbances, for roughly two weeks, with no medical attention or toilet facilities and a lack of clothing and food. Despite Government assurances, to the Special Rapporteur against Torture, that the physical integrity of prisoners was at all times fully guaranteed, Amnesty International said it was unaware of any investigation into the allegations and, in September 1994, still considered the case unresolved.

72. Another case, reported in the Peruvian press in January 1993 and still unresolved - according to Amnesty International - at the end of September 1994, was the allegation relating to torture and ill-treatment of persons in the same prison and the Olivia barracks, following a failed coup d'état. The allegations had been officially denied, apparently on the basis of two investigations, one by the Public Prosecutor and one by the military authorities, the latter having adduced the opinion of experts in forensic medicine. The relevant report failed, however, to say when the medical examinations had been carried out and whether the medical certificates had been made available for inspection.

73. He also asked whether the Civil Defence Committees and patrols which, according to a Senate Commission report in 1990, had been responsible for 254 deaths, still existed and, if so, how they were organized and supervised. He understood that the Offices of the Procurators for Human Rights had been abolished; if that were so, he would like to know the reason.

74. While wishing to avoid any suggestion of interference in the internal affairs of a sovereign State, the Committee had a duty to speak out against what it saw as failure to comply with international treaty obligations.

75. Mr. EL IBRASHI said that the high level of the Peruvian delegation testified to the importance Peru attached to the Convention. He himself had seen, during an official visit to that country two years previously, the difficulties faced by the Government in the current conditions.

76. He had a number of questions relating to the information provided in document HRI/CORE/1/Add.43. He was puzzled by the reference, in paragraph 123 (b), to confirmation of the appointment of judges and procurators at all levels every seven years; the implied necessity for judges to be re-appointed was most surprising. With regard to the institution of the Ombudsman, referred to in paragraphs 128-132 and 155-156, he would like to have details of the cases brought before that official; he would also like to have more information concerning the National Register of Detainees, referred to in paragraphs 157-160.

77. According to paragraph 164, the Constitution recognized two states of exception: a state of emergency and a state of siege; he would like to know which type was currently deemed to be in force, and how long it was expected to remain so. In that connection, paragraph 165 was disquieting since it implied that the National Police had ceased to exist as a police force. He would like to know whether that was so, whether the change was permanent, and what system had replaced it.

78. It was also unclear what status the Convention had with regard to other instruments and domestic law; according to paragraph 172, treaties might be invoked and directly applied by judges and administrative authorities - but that could also mean that they might not be. He wondered whether a judge had an obligation to apply the Convention, or whether it was up to a party to invoke it.

79. He endorsed Mr. Lorenzo's request for clarification concerning the status and powers of judges under the anti-terrorist laws and concerning the military courts, including information about their constitution and powers, rights of appeal, relations with the civil courts and what role the Public Prosecutor had to play in their proceedings.

80. Referring to the report (CAT/C/7/Add.16), he wondered whether the Committee could receive a copy of the report of the Working Group referred to in paragraph 15. He also mentioned that the Committee traditionally preferred that a State party's report should include a definition of torture.

81. Referring to paragraphs 150-152 of document HRI/CORE/1/Add.43, he asked for clarification with regard to compensation for victims of torture, since he felt that not all forms of torture might be covered for that purpose. He wondered whether the Civil Code regulations, referred to in paragraph 152, meant that the State was automatically involved; he also asked whether a victim had to wait until the relevant tribunal had issued its final decision or whether he or she could make a direct application to the courts.

82. Mr. BURNS said that the Committee had been told that the International Committee of the Red Cross (ICRC) had been invited to visit all military and police detention centres in Peru; Amnesty International, however, asserted that it had been excluded from visits between September 1992 and February 1993. He would like the Peruvian delegation to comment in that regard, as well as on Amnesty International's contention that the right of habeas corpus had been suspended for a period of 17 months although, according to the Peruvian authorities, a writ of habeas corpus could not and never had been suppressed. In that regard, he failed to see how the right of habeas corpus could be effective in a regime which had a system of incommunicado detention for 15 days, and even longer in cases of alleged treason.

83. It was hard to escape the inference, from all the information before the Committee, that the process applied in Peru was almost designed to conflict with the Convention; features such as arbitrary arrest, secret trial, and the inability of the person accused to be faced by his accusers led to such a conclusion. Likewise, the suspension and reappointment of judges was an offence against the basic concept of an independent judiciary. In addition,

the contention that a prisoner, if convicted, could be held in isolation for the first year of his sentence was, if true, highly difficult to reconcile with the Convention's provisions.

84. Referring to document HRI/CORE/1/Add.43, he said that it was astonishing to see, in paragraph 185, that the restriction on the intervention of a defence counsel immediately preceding a formal statement by the accused was justified on the grounds of alleged links between some lawyers and terrorists; according to such logic, any abuse of procedure by police officers in making an arrest would warrant abolition of the power of arrest.

85. Amnesty International had reported an instance in which an examining magistrate hearing a case of alleged ill-treatment of an arrested person, having ruled that there were grounds for the allegation, had been removed from office and charged with membership of a terrorist organization. If the facts reported were correct, he would like to know the basis for that action and its outcome.

86. He also asked whether the Public Prosecutor could visit places of military detention. With regard to the ordinary prison regime, he felt the Committee should be told how many prisons there were in Peru, how many were for political prisoners, whether there was segregation between women and men, detainees and ordinary criminals, juveniles and adults, and details such as cell sizes, number of occupants and rations.

The meeting rose at 1 p.m.